

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

BROOKELYNNE DESIGNS LLC AND 2 MONKEY
TRADING LLC

Plaintiffs,

v.

Civil Action No. 5:09-CV-00558 (GTS/DEP)

BENJAMIN INTERNATIONAL, INC.

Defendants.

CONSENT JUDGMENT AND DECREE

Pursuant to Rules 54 and 58 of the Federal Rules of Civil Procedure, Plaintiffs Brookelynne Designs LLC (“Brookelynne”) and 2 Monkey Trading LLC (“2 Monkey”) and Defendant Benjamin International, Inc. (“Benjamin”), having agreed to settle the claims asserted against each other, and to the entry of this Consent Judgment and Decree,

THE COURT ORDERS, ADJUDGES, and DECREES:

1. Plaintiffs Brookelynne and 2 Monkey have filed a Complaint against Benjamin asserting claims for Benjamin's alleged unauthorized use of Plaintiffs' FAIRY DUST marks, including: federal trademark infringement under 15 U.S.C. § 1114(1) (Section 32(1) of the Lanham Act); trade dress infringement, unfair competition, false designations of origin, false representations, and false advertising under 15 U.S.C. § 1125(a) (Section 43(a) of the Lanham Act); federal trademark dilution in violation of 15 U.S.C. § 1125(c) (Federal Trademark Dilution Act); dilution of a trademark and injury to business reputation under N.Y.G.B.L. §360-1; and trademark infringement and unfair competition under the common law of the state of New York.

2. This Court has personal jurisdiction over Brookelynne, 2 Monkey and Benjamin ("the Parties"), and subject matter jurisdiction over the causes of action. Venue is proper in this District.

3. Brookelynne asserts that it is now, and has been for all relevant times, the owner and/or successor-in-interest to all right, title, and interest to U.S. Trademark Registration No. 1,706,812 ("the '812 Trademark") for the word and design trademark FAIRY DUST in connection with novelty pouches and/or pendants containing glitter, U.S. Trademark Registration No. 3,168,645 ("the '645 Trademark") for the trademark FAIRY DUST in connection with bracelets, charms, clocks, jewelry, jewelry watches, watches, and wrist watches, and U.S. Trademark Registration No. 3,168,649 ("the '649 Trademark") for the trademark FAIRY DUST in connection with decorative glitter, and any goodwill associated with these trademarks.

4. Benjamin, including its subsidiaries, affiliates, parents, owners, officers, directors, employees, agents, attorneys, representatives, successors, and assigns, shall not sell, trade, distribute, advertise, promote, market, or otherwise provide to customers:

- a. any novelty pouches and/or pendants containing glitter bearing the FAIRY DUST trademark or any colorable imitation thereof, including any mark comprising a combination of the words "fairy" and "dust" during the period that the '812 Trademark remains in effect;
- b. any bracelets, charms, clocks, jewelry, jewelry watches, watches, and/or wrist watches, bearing the FAIRY DUST trademark or any colorable imitation thereof, including any mark comprising a combination of the words "fairy" and "dust" during the period that the '645 Trademark remains in effect; and

c. any decorative glitter bearing the FAIRY DUST trademark or any colorable imitation thereof, including any mark comprising a combination of the words "fairy" and "dust" during the period that the '649 Trademark remains in effect.

5. The Court dismisses the claims asserted by the Parties against each other with prejudice and with their consent.

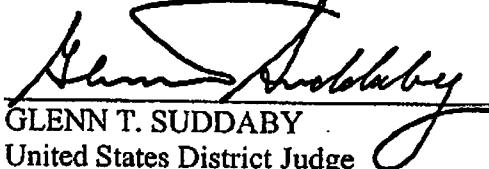
6. Except as included in the settlement agreement, the Parties waive their rights to damages, costs, and/or attorneys' fees associated with their claims against each other.

7. The Parties waive all rights of appeal from entry of this Consent Judgment and Decree.

8. The Court maintains personal jurisdiction over the Parties and subject matter jurisdiction for the purposes of enforcing the terms of this Consent Judgment and Decree and for the period until all sums payable under the settlement agreement are paid in full.

9. The Parties agree that this consent judgment shall be entered into without findings of fact and conclusions of law having been made and entered by the Court.

Date: February 23, 2010
Syracuse, NY


GLENN T. SUDDABY
United States District Judge

The undersigned counsel for Plaintiff Brookelynne Designs LLC and 2 Monkey Trading LLC and Defendant Benjamin International, Inc. hereby consent to and approve the foregoing Consent Judgment and Decree and represent that they have the authority from their respective clients to consent to do so.

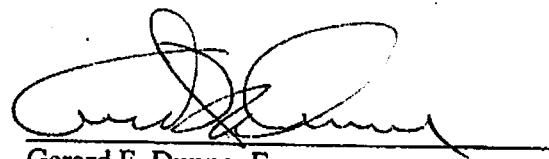
Date: February 22, 2010



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Date: February 22, 2010



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